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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

ORACLE USA, INC., a Colorado corporation;
ORACLE AMERICA, INC., a Delaware
corporation; and ORACLE INTERNATIONAL
CORPORATION, a California corporation,

Plaintiffs,

v.

RIMINI STREET, INC., a Nevada corporation;
and SETH RAVIN, an individual,

Defendants.

Case No. 2:10-cv-0106-LRH-VCF

**ORACLE'S RENEWED
MOTION FOR PERMANENT
INJUNCTION AGAINST
DEFENDANT RIMINI STREET,
INC.**

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NOTICE OF MOTION AND MOTION

Plaintiffs Oracle USA, Inc., Oracle America, Inc. and Oracle International Corporation renew their motion for a permanent injunction against Defendant Rimini Street, Inc. (“Rimini”).

I. INTRODUCTION

In 2016, after Oracle prevailed at trial, after full briefing, and after oral argument, the Court entered a permanent injunction with two separate sections. Section I, entitled “Injunction Pursuant to 17 U.S.C. § 502(a),” barred Rimini from specific conduct infringing Oracle’s copyrights. Section II, entitled “Injunction Pursuant to CDAFA,” barred Rimini from certain downloading activities. ECF No. 1065. On appeal, the Ninth Circuit affirmed the Court’s copyright rulings, reversed the computer fraud verdict relating to downloading, and vacated the injunction, so that this Court could determine whether Rimini’s adjudicated infringement of 93 Oracle copyrights warrants re-issuing the injunction. *Oracle USA, Inc. v. Rimini Street, Inc.*, 879 F.3d 948, 954–60, 962, 964 (9th Cir. 2018). The copyright injunction should be re-issued for all the reasons the Court issued Section I of the earlier injunction. The Court’s prior rulings, and the prior injunction itself, make clear that the copyright portion of the injunction was entirely separate from the injunction’s computer fraud provisions. Because the Ninth Circuit has upheld all of this Court’s and the jury’s decisions concerning Oracle’s copyright claims, the Court should re-issue the injunction.

In this action, Oracle proved that Rimini built its business through pervasive, undisputed, and unauthorized copying of Oracle’s software and support materials. The jury found, this Court previously held—and now the Ninth Circuit has affirmed—that Rimini provided support by making hundreds of unlicensed copies of Oracle’s software in the form of local software “environments” on Rimini’s systems and by engaging in “cross-use,” *i.e.*, the copying and use of one customer’s licensed software and derivative works to support other customers in violation of the customer’s license. *Oracle*, 879 F.3d at 955–60. The Ninth Circuit affirmed this Court’s finding that for each Oracle product at issue, Rimini’s support processes, including its local hosting and cross-use of Oracle software environments and other files, infringed Oracle’s copyrights. *Id.*

1 Allowing Rimini to compete unfairly against Oracle by continuing any acts of
 2 adjudicated copyright infringement harms the relationships and trust that Oracle has built for
 3 decades with its customers. Such broad market impacts are exactly the type of harm for which
 4 injunctive relief is warranted. Furthermore, Rimini's long history of infringement, along with its
 5 destruction of evidence, shifting explanations of its business practices, and outright lies in *Rimini*
 6 I warrant a permanent injunction to ensure that such infringing activity has truly stopped. Those
 7 harms, articulated previously in Oracle's Motion for a Permanent Injunction (ECF No. 900) and
 8 in this Court's Order granting Oracle's Motion (ECF No. 1049), remain more than sufficient to
 9 warrant injunctive relief in light of the Ninth Circuit's affirmance.

10 This Court previously rejected Rimini's argument that no injunction should issue because
 11 Rimini claims it has voluntarily ceased its improper actions, and if Rimini raises that argument in
 12 opposition, the Court should reject it again. Under well-established case law, Rimini's history of
 13 infringement, its obstreperous conduct and falsehoods over five years of litigation in *Rimini I*, its
 14 business imperatives, the harm caused by its infringement to Oracle's goodwill, and the fact that
 15 the Ninth Circuit has affirmed judgment for Oracle on each of its copyright claims (covering 93
 16 copyrights) all support Oracle's request for injunctive relief. If Rimini is, once again, lying
 17 about its business practices, an injunction is essential to ensure that Rimini ceases its infringing
 18 conduct. By contrast, if Rimini's claims about its purported "new process" turn out to be true—
 19 and they are not—then the injunction would impose no burden on Rimini, and would benefit
 20 Oracle by preventing Rimini from reverting to its old infringing ways.

21 **II. PROPOSED FINDINGS OF FACT**

22 The below proposed facts were all proved at trial, and in most cases were undisputed.
 23 These proposed findings of fact were previously submitted to the Court in connection with
 24 Oracle's first motion for a permanent injunction and for the convenience of the Court are set
 25 forth again here.¹

26
 27 ¹ Oracle has removed proposed findings of fact that related to the state-law computer access
 28 claims, as well as two proposed findings concerning the status of the *Rimini II* lawsuit that are
 now outdated.

A. Plaintiffs Oracle USA, Inc., Oracle America, Inc. And Oracle International Corporation

1. On February 15, 2010, Plaintiff Oracle USA, Inc., a Colorado corporation, merged with and into Sun Microsystems, Inc. Sun Microsystems, Inc., the surviving corporation, was then renamed “Oracle America, Inc.” (“Oracle America”). ECF No. 528, Undisputed Fact (“UF”) 1.

2. Plaintiff Oracle America is a Delaware corporation, with its principal place of business in Redwood City, California. ECF No. 528, UF 2.

3. Oracle America develops and licenses certain intellectual property, including copyrighted enterprise software programs, and provides related services. ECF No. 528, UF 3.

4. Oracle America is the successor in interest to Oracle USA, and through Oracle USA is the successor to PeopleSoft USA, Inc. and a successor in interest to certain PeopleSoft, JD Edwards, and Siebel entities. Hereinafter, Oracle USA, Inc. and Oracle America, Inc. are referred to collectively as “Oracle America.” ECF No. 528, UF 4.

5. Plaintiff Oracle International Company (“OIC,” and together with Oracle America, “Oracle”) is a California corporation, with its principal place of business in Redwood City, California. OIC owns and licenses certain intellectual property, including copyrighted enterprise software programs used around the world. ECF No. 528, UF 5.

6. In December 2004, Oracle acquired PeopleSoft, including the PeopleSoft copyrighted materials in suit related to PeopleSoft Enterprise, JD Edwards Enterprise One and JD Edwards World, for \$11.1 billion. Trial Transcript (“Tr.”) 957:15-22 (Catz).

7. In January 2006, Oracle acquired Siebel, including the Siebel copyrighted materials in suit, for \$6.1 billion. ECF No. 528, UF 39.

8. OIC is the owner or exclusive licensee for each of the copyright registrations-in-suit at issue in this case, and each of those registrations is valid. ECF No. 528, UF 40-41.

9. Intellectual property rights formerly held by certain PeopleSoft, JD Edwards, and Siebel entities were transferred to OIC as part of the acquisitions of PeopleSoft and Siebel by

1 Oracle. ECF No. 528, UF 6.

2 10. As is typical in the enterprise software industry, Oracle does not sell ownership
3 rights to this software or the related support products Oracle provides to its paying customers.

4 ECF No. 528, UF 7.

5 11. Instead, Oracle's customers purchase licenses that grant them limited rights to use
6 specific Oracle software programs. ECF No. 528, UF 8.

7 12. Separate from the license to the underlying software, Oracle also enters into
8 support contracts with its customers, which entitled them to receive, for an annual maintenance
9 fee, software upgrades and software support, including certain fixes, patches and updates. ECF
10 No. 528, UF 9.

11 13. Oracle's predecessors also sold both software licenses and support contracts for
12 PeopleSoft, JD Edwards, and Siebel enterprise software. ECF No. 528, UF 10.

13 **B. Defendants Rimini Street And Seth Ravin**

14 14. Defendant Rimini Street, Inc. is a company that provides similar software support
15 services to licensees of Oracle's PeopleSoft, JD Edwards and/or Siebel software. ECF No. 528,
16 UF 11.

17 15. Rimini competes directly with Oracle to provide these services. ECF No. 528, UF
18 12.

19 16. Defendant Seth Ravin is the founder, president and CEO of Rimini, as well as the
20 former President of TomorrowNow, Inc., a subsidiary of SAP AG ("TomorrowNow"). Tr.
21 240:9:15, 351:2-7 (Ravin).

22 17. Rimini launched its operations in September 2005, offering support services for
23 Oracle's Siebel software. Rimini conducted a pilot launch of its Siebel support in January 2006
24 and acquired its first Siebel customer in February 2006. ECF No. 528, UF 13.

25 18. Rimini expanded its support offering to Oracle's PeopleSoft products in April
26 2006 and to Oracle's JD Edwards products in September 2006. ECF No. 528, UF 14.

27 19. Rimini contracted with 364 customers to provide support for PeopleSoft, JD
28 Edwards, and/or Siebel enterprise software between 2006 and November 2011. ECF No. 528,

1 UF 15.

2 20. Each of Rimini's PeopleSoft, JD Edwards, and/or Siebel customers licensed
3 PeopleSoft, JD Edwards and/or Siebel enterprise software from Oracle. ECF No. 528, UF 16.

4 **C. Copies Of Oracle Software And Support Materials On Rimini's Servers**

5 21. Rimini copied "massive amounts" of Oracle software and support materials,
6 without ever obtaining any license from Oracle. Tr. 165:12-16 (Davis); 302:3-4 (Ravin).

7 22. Rimini had "thousands and thousands" of copies of Oracle software on Rimini
8 servers. Tr. 551:10-18 (Ravin).

9 23. Rimini created and used full working copies of the PeopleSoft, JD Edwards, and
10 Siebel software as "environments" on Rimini's servers. Tr. 303:1-5, 320:13-321:2, 758:23-
11 759:4, 760:8-15 (Ravin); 1146:5-17 (Chiu); 1757:14-1758:11 (Whittenbarger).

12 24. Rimini had at least 478 PeopleSoft, JD Edwards, and Siebel environments on its
13 own computer systems. ECF No. 528, 19, 24, Exs. B & F (undisputed); Tr. 174:8-20 (Davis).

14 25. Rimini has at least 216 environments on its servers that contain installed copies of
15 Oracle Database. ECF No. 528, UF 25.

16 26. Each environment on Rimini's local systems constitutes a reproduction of one or
17 more of the copyright registrations-in-suit. ECF No. 528, UF 24.

18 27. Many of Rimini's fixes for PeopleSoft software involved files that contained
19 modified versions of Oracle's source code. ECF No. 528, UF 42.

20 28. All of the copies of and derivative works prepared from Oracle software and
21 support materials that Rimini created and distributed to provide support were infringing. PTX
22 1458 (ECF No. 401), 5328 (ECF No. 5328) (stipulations); Jury Instruction 24, ECF No. 880
23 (final jury instructions); ECF No. 896 (verdict).

24 **D. Rimini's Copying Of PeopleSoft Software And Support Materials**

25 29. Rimini's PeopleSoft copies were unauthorized. ECF No. 474 (Order re Oracle's
26 First Mot. for Part. Summ. J.) at 27-28; ECF No. 896 (verdict).

27 30. The City of Flint and Pittsburgh Public Schools licenses are representative of "the
28 PeopleSoft license agreements for all of Rimini's PeopleSoft customers." ECF No. 599 at 1.

1 31. The PeopleSoft license expressly limits “copying the licensed software to only the
2 [customer’s] facilities” and “solely” for the customer’s “internal data processing.” ECF No. 474
3 at 11-13; 17-18.

4 32. Both licenses forbid Rimini to have PeopleSoft software or documentation on its
5 systems. PTX 698 at 5, § 16 (defined term “Software” includes documentation); *id.* at 1 § 1.1
6 (“Software” must be at customer’s facilities); PTX 699 at 6 § 15 (defined term “Licensed
7 Rights” includes both software and documentation); *id.* at 1 § 2.1(d) (customer may not
8 “[d]istribute . . . to any third party any portion of the Licenses Rights”).

9 **E. Rimini’s Copying Of Oracle Database**

10 33. The Court granted summary judgment to Oracle on its copyright infringement
11 claim as to Oracle Database. ECF No. 476 at 15-16.

12 **F. Copying of Siebel And JD Edwards Software And Support Materials**

13 34. Rimini’s Siebel and JD Edwards copies were unauthorized. ECF No. 896
14 (verdict).

15 35. This Court already found that the JD Edwards license for Giant Cement (PTX
16 704) and the Siebel license for Novell (PTX 705) permit copies for “archival” and “backup”
17 purposes only. ECF No. 474 at 22, 24.

18 36. Mr. Allison’s testimony established that those licenses were representative of the
19 JD Edwards and Siebel licenses generally, as both companies “used form license agreements.”
20 Tr. 1117:25-1118:5, 1118:15-19 (Allison).

21 37. Licenses gave the customer the right “[t]o reproduce, exactly as provided by
22 [Oracle], a reasonable number of copies of the [software] solely for archive or emergency back-
23 up purposes or disaster recovery and related testing.” ECF No. 474 at 23 (quoting PTX 705,
24 § 2.1(iv)).

25 38. That provision can only be satisfied if Rimini’s copies for “us[e] exclusively for
26 archival and back-up purposes, and related testing, as directly contemplated by Section 2.1(iv).”
27 ECF No. 474 at 24 n.20.

28 39. Copies only fit that definition when they are created as “inherently an unmodified

1 copy of the software for use in the event that the production copy of the software (the copy used
 2 on a customer's systems) is corrupted or lost." ECF No. 474 at 11 (emphasis supplied). In
 3 "complete contrast" to that permitted backup copy, a software copy that is "modifiable (or
 4 already modified)" is outside the scope of the license. *Id.*

5 40. Rimini "used all of the software," including all its "Siebel software" and "JDE
 6 software" in its "work for customers." Tr. 303:1-5 (Ravin); Tr. 364:3-8 (Ravin) (all
 7 environments on Rimini's systems were "used in order to support customers" and for
 8 "troubleshooting").

9 41. Rimini's Siebel environments were "designed" at the outset for, among other
 10 uses, "testing and development." Tr. 318:19-22 (Ravin); Tr. 1146:5-25 (Chiu) (Siebel copies
 11 "used to provide support"); Tr. 758:23-759:4 (Ravin) (same); Tr. 1754:8-15 (Whittenbarger)
 12 (Siebel copies used for training); PTX 1461 (Chiu discussing customer Caterpillar (Siebel) "we
 13 reclarified how our support model is based on building up an in-house lab environment with a
 14 vanilla [not customized] fix-master [environment to test fixes and patches] and a customized
 15 replica of their dev/test environment would enable us to maximize our responsiveness to them").

16 42. Ravin likewise confirmed that JD Edwards environments were for "testing and
 17 development" and for "diagnostics and support." Tr. 321:1-6, 760:8-15 (Ravin).

18 43. Ravin explained Rimini's troubleshooting process: "you're taking the software,
 19 you're playing with it to see if you can figure out what's going wrong, what the customer had
 20 called in and reported." Tr. 364:24-365:1 (Ravin).

21 44. Rimini's copies of Oracle software were "general development test
 22 environments" or "generic environment[s]" otherwise used for testing, development, support,
 23 and troubleshooting. Tr. 320:8-18, Tr. 367:2-8 (Ravin); Tr. 367:18-23 (Ravin) (Rimini would
 24 use Customer A's software to troubleshoot for Customer B); Tr. 1146:5-25 (Chiu) ("explaining
 25 that Rimini's internal Siebel environments were "used to provide support for those clients that
 26 provided us their software"); Tr. 3186:13-3187:4 (Slepko) (Siebel local environments were used
 27 to assist clients with their problems); Tr. 1754:8-15 (Whittenbarger) (Siebel environment used
 28 for internal training); Tr. 1757:14-1758:5 (Whittenbarger) (Rimini "set up environments to

troubleshoot issues”); Tr. 2043:22-2044:21 (Blackmarr) (use of Customer A’s software to support Customer B); PTX 181 at 2 (June 2009 installation of JD Edwards was “to be used for any configuration, testing and development required”); PTX 186 at 2 (Chiu explaining “I am planning a JDE install for Medtronic’s Support system”); PTX 190 (JD Edwards environments associated with specific customers continued to be created through February 2010); PTX 33 (“Rimini would build out a[] [JD Edwards] environment to support them [customer]”); PTX 310 (Siebel environments used for troubleshooting); PTX 744 (same).

45. An environment used for testing, development, or troubleshooting is not a backup because you “don’t touch” a backup. Tr. 180:9-22, 182:16-183:4 (Davis).

46. An “archive” or “backup”: a “copy . . . put on a physically different place,” on a “separate disk” or otherwise “put aside.” Tr. 180:5-181:17, 182:16-24 (Davis); *see also* Tr. 362:21-363:23 (Ravin) (discussing archives shipped to customers on DVDs or USB drives and backups on tape drives).

47. Backups are stored on tapes or other storage, unmodified. Tr. 730:4-11 (Ravin); Tr. 180:5-181:17, 182:16-24 (Davis).

48. Copies used for troubleshooting, support, testing, or development are not backups. Tr. 180:5-181:17, 182:16-24 (Davis).

G. RAM Copies

49. Rimini created additional in-memory copies, called RAM copies, every time it started up or ran Oracle software. Tr. 184:3-185:4 (Davis).

H. Cross-use And Distribution Of Oracle Software And Support Material

50. Rimini’s unlicensed copying included widespread cross-use of Oracle software. Tr. 799:6-16 (Ravin).

51. After previously denying cross-use, Ravin admitted at trial cross-use occurred “all the time.” Tr. 552:1-13 (Ravin).

Cross-use to Create Environments: Cloning

52. Rimini’s cross-use included unlicensed “cloning” of Oracle software (copying an environment created ostensibly for one customer for another customer). Tr. 371:5-9, 374:12-15,

777:22-24 (Ravin); 1365:23-1366:14, 1381:188 (Williams); 192:22-193:7, 196:25-197:24, 198:25-199:11 (Davis); PTX 439; PTX 1491A; PTX 3507 at 31.

Cross-use of Environments: Developing Fixes and Updates

53. On many occasions, Rimini used one customer's environment to support other customers. Tr. 2232:2-2233:23 (Benge).

54. Rimini used unlicensed "development" environments to create updates and fixes for multiple customers. Tr. 320:2-7 (Ravin); 202:18-203:3, 204:2-205:10 (Davis); PTX 5429.

55. Rimini "reused [] all the time" by taking an update or fix that Rimini created for one customer and using it for and distributing it to another customer, including using Oracle's copyrighted code, changing it and distributing it to multiple Rimini customers. Tr. 552:1-552:5, 809:19-810:13 (Ravin); 2232:2-2233:23 (Benge).

Cross-use of Environments: Troubleshooting

56. On many occasions, Rimini used one customer's software to troubleshoot issues other customers were having. Tr. 367:18-23 (Ravin); 2043:22-2044:21 (Blackmarr).

Cross-use of Support Material

57. Rimini used the code in one customer environment to write a detailed design document to be used with other clients. Tr. 1656:20-1661:4 (Grigsby).

58. Rimini also used Oracle copyrighted support material as part of a sales presentation to customers. Tr. 1662:16-1668:7 (Grigsby).

59. Rimini stored Oracle support materials in non-client-specific folders. Tr. 1155:18-21 (Hicks).

60. Rimini used support documentation downloaded on behalf of one customer to rephrase the information and distribute it to other Rimini clients whose Oracle support was expired. PTX 236; Tr. 188:8-189:15 (Davis). Rimini created "extracts" that Rimini gave its customers so that unlicensed copies were shared amongst customers. Rimini told customers that it was creating separate extracts for each customer, but Rimini was using one customer's log-in, starting with a faux customer, Leads Customers Growth, to copy all materials from Oracle's websites and then copying disks that Rimini distributed to multiple customers. Tr. 333:9-334:3,

1 335:12-16 (Ravin); 1160:15-1161:10 (Hicks); PTX 7.

2 **I. Software Library**

3 61. Rimini's "software library" was massive. PTX 10; Tr. 166:9-20 (Davis); 242:1-3,
4 242:14-20 (Ravin).

5 62. Ravin approved copying to that library (PTX 4 at 3-4; PTX 5), which included
6 software and documentation for all of the products at issue: PeopleSoft, JD Edwards, Siebel, and
7 Database. Tr. 167:5-10 (Davis); Tr. 1756:6-1757:8 (Whittenbarger); PTX 8; PTX 9; PTX 10;
8 PTX 223.

9 63. Rimini downloaded PeopleSoft and JD Edwards materials into the library before
10 Rimini even had any clients licensed for those products. Tr. 289:5-10 (Ravin); PTX 4; PTX 5;
11 PTX 6.

12 64. Rimini did not keep track of how that library was used or audit the library, and
13 Rimini deleted that library shortly before Oracle filed this lawsuit. Tr. 170:24-171:10 (Davis);
14 Tr. 421:18-20, 422:21-423:4 (Ravin).

15 **J. Rimini's Illegal Actions Have Harmed Oracle's Reputation And Goodwill**

16 65. Rimini's copyright infringement allowed it to charge substantially less than
17 Oracle charged for support: often 50% or less of what Oracle charged. Tr. 207:10-16 (Davis);
18 Tr. 1940:6-1942:6, 1950:16-1951:12 (Dean).

19 66. Rimini's copyright infringement allowed it to gain scale quickly, with minimal
20 effort and investment. Tr. 443:4-445:6 (Ravin); Tr. 1702:18-1703:22 (Yourdon); Tr. 1453:22-
21 1476:6 (Maddock).

22 67. By purporting to offer vendor-level support at half the price or less of Oracle
23 support and creating the impression that Oracle was overcharging for support, Rimini eroded
24 "the bonds and the trust that [Oracle] ha[d] with [its] customers." "For the customers [Oracle]
25 lost, it totally broke the relationship." By breaking these relationships, customers were also less
26 likely to purchase other Oracle products. Tr. 948:17-949:8, 934:14-936:11 (Catz); DTX 146.

27 68. A customer who moves to Rimini for support may later find that its systems are
28 out of date. Tr. 935:18-936:3 (Catz); Tr. 1571:11-1573:6 (Screven).

69. By creating uncertainty and distrust in the marketplace, Rimini's copyright infringement caused Oracle to "hav[e] to work extra hard to keep the customers [Oracle] ha[d]" due to the injury to Oracle's goodwill and reputation. Tr. 948:17-949:12 (Catz). As well, customers who left Oracle support for Rimini support were less likely to license additional software of any type from Oracle. *Id.*

K. Rimini Has Been Evasive And Dishonest Throughout This Litigation

70. Rimini continued its infringing activities through at least February 2014. Tr. 751:7-15 (admission by counsel for Rimini). Rimini claims to have changed certain of its infringing behaviors after the Court granted partial summary judgment to Oracle on its copyright claims. Tr. 754:9-13 (colloquy with the Court).

71. Rimini created local environments and prepared and distributed derivative works from those environments for years after SAP and TomorrowNow conceded liability for copyright infringement and after TomorrowNow pled guilty to criminal copyright infringement. *See* ECF No. 823-6 (civil stipulation discussing local environments on TomorrowNow's computer systems); ECF No. 823-5 (guilty plea discussing local environments on TomorrowNow's computer systems).

72. Before trial, Rimini claimed that a software library never existed at Rimini Street. PTX 5332 (March 29, 2010 Answer) at ¶ 34 (denying existence of software library); PTX 1482 (June 16, 2011 Answer) at ¶ 34 (same).

73. At trial, Ravin claimed that Rimini's software library was not really a library, Tr. 247:7-12, that it was only "installation media," Tr. 255:6-9, 565:9-11, and that it was only PeopleSoft, Tr. 247:14-20.

74. Before trial, Rimini's 30(b)(6) designee, Senior Vice President Brian Slepko, and Ravin each flatly denied in depositions ever using one customer's environment to develop or test updates for other customers. Tr. 804:25-805:5 (Ravin); 3173:1-3174:3 (Slepko).

75. At trial, Ravin admitted that Rimini used one customer environment to develop or test updates for other customers "all the time." Tr. 552:1-5 (Ravin).

L. Oracle Alleges Continued Infringement In *Rimini II*

76. Rimini filed its declaratory action regarding its allegedly new business model on October 15, 2014. ECF No. 901, Decl. of John A. Polito in Supp. of Mot. (“Polito Decl.”) ¶ 3 & Ex. A. Oracle filed its Counterclaims on February 17, 2015, alleging copyright infringement and additional claims. *Id.* ¶ 4 & Ex. B.

III. LEGAL STANDARDS

The Copyright Act authorizes this Court to enter a permanent injunction “on such terms as it may deem reasonable to prevent or restrain infringement of a copyright.” 17 U.S.C.

§ 502(a). The Ninth Circuit applies the traditional, four-factor test set forth in *eBay Inc. v.*

MercExchange, L.L.C., 547 U.S. 388 (2006), to a request for an injunction in a copyright case.

Flexible Lifeline Sys., Inc. v. Precision Lift, Inc., 654 F.3d 989, 999 (9th Cir. 2011).

IV. ARGUMENT

Oracle renews its request for a permanent injunction barring further copyright infringement by Rimini. The trial record and other evidence before the Court evidences Oracle’s entitlement to this remedy. Oracle advances the same arguments previously submitted with its motion for a permanent injunction (ECF No. 900), which have been updated in light of this Court’s prior Order granting Oracle injunctive relief (ECF No. 1049), as well as the Ninth Circuit’s opinion affirming Rimini’s copyright infringement.

Since this Court entered the permanent injunction, the factual record has not changed, the law concerning issuing permanent injunctions in copyright cases has not changed, and accordingly, the merits of this motion have not changed.

A. The Court Should Enter A Permanent Injunction

To obtain an injunction on its copyright claims, Oracle must show that “1) [it] suffered an irreparable injury; 2) remedies available at law are inadequate to compensate for that injury; 3) considering the balance of hardships between [Oracle] and [Rimini], a remedy in equity is warranted; and 4) the public interest would not be disserved by a permanent injunction.” *Apple Inc. v. Psystar Corp.*, 658 F.3d 1150, 1152–53 (9th Cir. 2011) (“*Apple II*”).

1 The record in this case shows why harm from continued or future infringement will be
2 irreparable. The Ninth Circuit affirmed this Court's judgment that Rimini unlawfully infringed
3 Oracle's 93 copyrights at issue. Rimini's unlawful actions irreparably injured Oracle's business
4 reputation and harmed its goodwill. Rimini's infringing and illegal short-cuts enabled it to
5 rapidly gain scale and offer cut-rate support for Oracle software. Through that misconduct,
6 Rimini gained an improper advantage that, to this day, it uses to harm Oracle's goodwill by
7 telling customers that Oracle's services are overpriced and could be provided at Rimini's rates.
8 Because Oracle seeks only to enjoin illegal actions or copying that this Court has found to be
9 outside the scope of any license, and because Rimini claims that it no longer infringes, the
10 balance of hardships tips entirely in favor of Oracle. Finally, public policy favors entry of
11 injunctions against unlawful behavior.

12 The Ninth Circuit's reversal on the state statutory claims in no way undercuts the basis or
13 need for a permanent injunction to restrain Rimini's copyright infringement. The prior
14 Injunction, itself, is divided into two separate parts, citing different statutes (one federal
15 copyright, and the other state law computer fraud), and enjoining different Rimini conduct.
16 There never was, and there is not now, any linkage between the two parts of the injunction.
17 Oracle never argued that the CDAFA or the NCCL² supported the issuance of a copyright
18 injunction, and Rimini never argued that these statutes militated against issuing a copyright
19 injunction. Rather, the parties vigorously litigated whether the activity found to be copyright
20 infringement warranted the issuance of a copyright injunction, and the Court correctly
21 determined that an injunction was appropriate under *the Copyright Act*. Just as this Court
22 previously held, all four *eBay* factors continue to support issuing a permanent injunction as to
23 Rimini's adjudged—and now affirmed—infringement of Oracle's copyrights.

24
25
26
27 _____
28 ² This Court previously ruled that Oracle could not seek a permanent injunction under the NCCL.
ECF No. 1049 at 4:7–15.

1 **1. Rimini's Infringement Has Caused And Will Cause Irreparable**
 2 **Injury To Oracle's Goodwill And Reputation**

3 This Court previously found that Rimini's infringement of Oracle's copyrights
 4 "irreparably injured Oracle's business reputation and goodwill." ECF No. 1049 at 5:17–19.
 5 Nothing in the Ninth Circuit's opinion alters that conclusion. Courts routinely find that injury to
 6 business reputation and to goodwill is irreparable harm. *See Apple II*, 658 F.3d at 1154
 7 (irreparable harm shown where infringement was "causing Apple a loss of business reputation"
 8 and "'goodwill'") (internal citation omitted); *see also Rent-A-Center, Inc. v. Canyon Television*
 9 *& Appliance Rental, Inc.*, 944 F.2d 597, 603 (9th Cir. 1991) ("[I]ntangible injuries, such as
 10 damage to ongoing recruitment efforts and goodwill, qualify as irreparable harm."); *MySpace,*
 11 *Inc. v. Wallace*, 498 F. Supp. 2d 1293, 1305 (C.D. Cal. 2007) ("Harm to business goodwill and
 12 reputation is unquantifiable and considered irreparable."); *Am. Broadcasting Cos., Inc. v. Aereo,*
 13 *Inc.*, 874 F. Supp. 2d 373, 399 (S.D.N.Y. 2012) (finding likelihood of irreparable harm where
 14 alternative content-delivery company was expanding rapidly and the company's CEO had
 15 testified that "part of the idea . . . was to allow consumers to bypass" traditional content-delivery
 16 channels), *aff'd sub nom. WNET v. Aereo, Inc.*, 712 F.3d 676, 696 (2d. Cir. 2013), *rev'd on diff.*
 17 *grounds sub nom. Am. Broadcasting Cos., Inc. v. Aereo, Inc.*, 134 S. Ct. 2498 (2014); *Teller v.*
 18 *Dogge*, No. 2:12-CV-591, 2014 WL 4929413, at *5 (D. Nev. Sept. 30, 2014) (entering
 19 permanent injunction because copyright infringement "likely to have a negative effect on
 20 plaintiff's reputation and goodwill").

21 "[I]t is undisputed that Oracle and Rimini directly compete with each other to provide
 22 software support services and that Rimini infringed Oracle's copyrighted works." ECF No. 1049
 23 at 5:19–20. "Direct competition in the same market is certainly one factor suggesting strongly
 24 the potential for irreparable harm without enforcement of the right to exclude." *Presidio*
 25 *Components, Inc. v. Am. Technical Ceramics Corp.*, 702 F.3d 1351, 1363 (Fed. Cir. 2012).

26 In addition to this direct competition, Rimini's business model causes irreparable injury
 27 to Oracle's business reputation and goodwill. That business model, as this Court previously
 28 found, "was built entirely on its infringement of Oracle's copyrighted software." ECF No. 1049

1 at 6:3–4. Rimini’s “continued infringement,” this Court found, “enabled it to rapidly build its
 2 business and gain market share against Oracle in the software support service market by offering
 3 cut-rate prices on its support services for Oracle software, generally at a discount of 50% of
 4 Oracle’s prices for similar service contracts.” *Id.* at 5:24–6:3. Without this massive
 5 infringement, “Rimini would not have achieved its current market share and business growth
 6” *Id.* at 6:5–6. This robbed Oracle of the “head start” it was entitled to as the copyright
 7 holder. *See Oracle*, 879 F.3d at 958 (“Giving a head start to Oracle in creating development
 8 environments is entirely consistent with the Supreme Court’s teaching[s]”). Put differently,
 9 through its infringement of Oracle’s copyrights, “Rimini gained an improper advantage that it
 10 used to harm Oracle’s business reputation and goodwill in the software service industry.” ECF
 11 No. 1049 at 6:9–11; *cf. Douglas Dynamics, LLC v. Buyers Prods. Co.*, 717 F.3d 1336, 1345
 12 (Fed. Cir. 2013) (“Where two companies are in competition against one another, the patentee
 13 suffers the harm—often irreparable—of being forced to compete against products that
 14 incorporate and infringe its own patented inventions.”).

15 The evidence at trial amply supports the Court’s findings of irreparable injury.
 16 Testimony from Rimini top executives established that Rimini’s copyright infringement enabled
 17 Rimini to gain scale quickly with minimal effort, and this infringement is the reason why Rimini
 18 can offer its cut-rate support today. Tr. 443:4–445:6 (Ravin) (Rimini’s plan was to avoid writing
 19 its own software, thereby enabling it to get high valuation multiples without significant
 20 investment); *see also* Tr. 1702:18–1703:22 (Yourdon); Tr. 1453:22–1476:6 (Maddock) (non-
 21 infringing alternatives lack scale). Rimini copied Oracle software, built a business (PTX 2155 at
 22 4), and did so that, in Rimini’s words, Rimini Street would “separate Oracle from its acquired
 23 licensees -- denying Oracle recurring revenue.” PTX 3. Rimini copied Oracle software,
 24 targeted Oracle customers and disrupted the goodwill in those relationships, as well as the
 25 opportunity to repair any damaged relationships. Ravin acknowledged terminating Oracle’s
 26 relationships with \$300 million of Oracle contracting customers. Tr. 548:11–19, 549:6–11
 27 (Ravin). Rimini even talked about Oracle customers as a billion-dollar opportunity. Tr.
 28 1441:25–1442:5 (Maddock); Tr. 2691:21–24 (Zorn).

1 Rimini's infringing business model further undermines trust in Oracle, Oracle's business
 2 offerings and customer relationships, and additionally harms Oracle's goodwill with its
 3 customers. As this Court previously found, "Rimini landed clients for its services by telling
 4 customers that Oracle's services were overpriced and could be provided at the same rate Rimini
 5 was offering while still providing Oracle significant profits, thereby harming Oracle's business
 6 reputation." ECF 1049 at 6:6–9. The evidence also supports this finding—namely, testimony
 7 from Oracle's CEO, Ms. Safra Catz:

8 Q. And what does a promise like this mean for Oracle?

9 A. Well, when they come to our customers, our customers wonder
 10 all of a sudden whether we are overcharging them. It really breaks
 11 the bonds and the trust that we have with our customers. We've
 12 negotiated a price with them. All of a sudden, they're wondering
 13 whether we've treated them fairly.

14 Tr. 935:11-17. The evidence similarly showed that a customer who believes Rimini's promises
 15 may later find its systems out of date and "fr[ozen] in time," then incorrectly blame Oracle for a
 16 bad experience. Tr. 935:18-936:3 (Catz); *see also* Tr. 1571:11-1573:6 (Screven). As such,
 17 Rimini's unlawful infringement continues to damage Oracle's reputation among its customers
 18 and continues to harm Oracle's goodwill. These harms will only be amplified by continued or
 19 future infringement.

20 **2. Remedies Available At Law Are Inadequate To Compensate For**
 21 **Oracle's Irreparable Injury**

22 This Court also recognized that the nature of the irreparable harm suffered by Oracle
 23 supports a finding that no adequate remedy at law exists to compensate Oracle. ECF No. 1049 at
 24 6:24–25 ("Oracle has established that monetary damages alone are inadequate to compensate it
 25 for the losses suffered because of defendants.").

26 First, the harms to Oracle's goodwill and market reputation are unquantifiable, and thus
 27 cannot be compensated solely by remedies at law. ECF No. 1049 at 6:25–7:1 ("[C]ertain harm
 28 suffered by Oracle like lost market share and company goodwill are intangible injuries difficult

1 to quantify and compensate.”). “Harm resulting from lost profits and lost customer goodwill is
 2 irreparable *because* it is neither easily calculable, nor easily compensable and is therefore an
 3 appropriate basis for injunctive relief.” *eBay, Inc. v. Bidder’s Edge, Inc.*, 100 F. Supp. 2d 1058,
 4 1066 (N.D. Cal. 2000) (emphasis supplied); *accord Apple Inc. v. Psystar Corp.*, 673 F. Supp. 2d
 5 943, 949–50 (N.D. Cal. 2009) (“*Apple I*”) (“the same evidence and rationale put forth by Apple
 6 to show irreparable harm support the conclusion that an award of damages would be inadequate,
 7 simply because the harm caused to Apple’s reputation, goodwill, and brand is difficult, if not
 8 impossible, to quantify.”), *aff’d, Apple II*, 658 F.3d at 1162.

9 Second, courts find irreparable harm even where lost profits or lost future sales may be
 10 difficult to prove. *See Mytee Products, Inc. v. Harris Research, Inc.*, 439 F. App’x 882, 887
 11 (Fed. Cir. 2011) (“We have never held, however, that in order to establish irreparable harm a
 12 patentee must demonstrate that it is entitled to lost profits . . .”). Any finding by the jury that
 13 the amount of Oracle’s lost profits had not been adequately proven is therefore no bar to entry of
 14 Oracle’s requested injunction. Indeed, it is fully consistent with the need for injunctive relief.
 15 That is particularly the case here, because as this Court previously found, “[t]he difficulty for the
 16 jury in determining damages in this action supports Oracle’s claim that monetary damages alone
 17 are insufficient to fairly and fully compensate it for defendants’ conduct.” ECF No. 1049 at
 18 7:13–15. And consideration must also be given to the copyright holder’s right to exclude, which
 19 “has routinely been held difficult to compensate solely through monetary compensation.” *Id.* at
 20 7:16–17 (citing *eBay*, 547 U.S. at 395 (Roberts, C.J. concurring)). In sum, the harms Rimini has
 21 caused to Oracle’s goodwill and market reputation are not adequately compensated by money
 22 damages.

23 3. The Balance Of Hardships Tips Strongly In Favor Of Oracle Because 24 Rimini’s Acts Have No Legitimate Business Purpose

25 Because Oracle seeks only to enjoin acts that have already been determined to be
 26 unlawful, the balance of hardships tips in Oracle’s favor. This Court agreed and previously
 27 found this *eBay* factor also weighed in Oracle’s favor. ECF No. 1049 at 8:2–8. Nothing has
 28 changed that warrants a different conclusion now.

1 With respect to copyright infringement, the balance of hardships tips undisputedly in
 2 favor of a rights holder seeking to protect its copyrighted works where the party to be enjoined
 3 does not have a “separate legitimate business purpose” for continuation of the infringing acts.
 4 *Metro-Goldwyn-Mayer Studios v. Grokster, Ltd.*, 518 F. Supp. 2d 1197, 1220 (C.D. Cal 2007);
 5 *Teller*, 2014 WL 4929413 at *5 (“Any harm to defendant in forcing him to comply with the
 6 requirements of the law is outweighed by plaintiff’s efforts to protect his copyrighted
 7 performances . . . from consumer confusion.”); *cf. Rimini II*, Order re Mot. to Strike, Dkt. 90 at 6,
 8 2015 WL 4139051, *3 (D. Nev. July 9, 2015) (declining to give weight to “[t]he fact that there
 9 may not be any manner by which a competing company like Rimini can engage in its services
 10 without engaging in copyright infringement”). Here, the Court held that “Rimini does not have a
 11 separate legitimate business purpose for continuation of the infringing acts.” ECF No. 1049 at
 12 8:2–3. Not once has Rimini argued to the contrary.

13 If, as Rimini claims, it has ceased all infringing conduct, then an injunction would create
 14 no burden whatsoever on Rimini, as Rimini only would be barred from doing things that it
 15 purportedly is no longer doing. *See id.* at 8:3–7 (“[N]o evidence [shows that] Rimini would be
 16 harmed by an injunction . . . because Rimini has already represented to the court that it has
 17 changed its business model and support services away from the infringing model in response to
 18 the court’s orders on summary judgment.”). However, if, as Oracle believes, Rimini’s
 19 misconduct is continuing, then the balance of hardship tips decisively in Oracle’s favor as Rimini
 20 is a recidivist, with no legitimate business purpose for its actions, that can only be stopped
 21 through an appropriate injunction.

22 4. Public Policy Favors Entry Of An Injunction Against Copyright 23 Infringers Such As Rimini

24 This Court also previously found that an injunction against future copyright infringement
 25 is in the public interest. ECF No. 1049 at 8:13–15. A “reasonably tailored” injunction that
 26 vindicates copyright rights “would not harm the interests of the public; rather, [it would be]
 27 consistent with the policies underlying copyright protection” *Apple I*, 673 F. Supp. 2d at
 28 950; *see also Apple Computer v. Franklin Computer Corp.*, 714 F.2d 1240, 1255 (3d Cir. 1983)

1 (“[I]t is virtually axiomatic that the public interest can only be served by upholding copyright
 2 protections and, correspondingly, preventing the misappropriation of the skills, creative energies,
 3 and resources which are invested in the protected work.”). Those policies are to encourage
 4 creating new, original works and discourage infringers who free ride on the works of others.
 5 *Compare Eldred v. Ashcroft*, 537 U.S. 186, 225–26 (2003), with Tr. 443:4-445:6 (Ravin)
 6 (Rimini’s plan was to get the high-multiples valuation of a software company while avoiding the
 7 investment required to write original software).

8 Nor would an injunction impair the public’s interest in enterprise software support
 9 services. That is “because Rimini has repeatedly represented to the court that its current business
 10 model is not based on its prior infringing conduct. Taking defendants’ statements as true, then
 11 Rimini’s ability to compete against Oracle in the software support service market would not be
 12 lost with an injunction, and thus, the public would still have access to competition in that
 13 market.” ECF No. 1049 at 8:20–23.

14 Because each of the *eBay* factors again favors issuance of a permanent injunction, this
 15 Court should re-enter those portions of its previous injunction that enjoin Rimini’s infringement
 16 of Oracle’s copyrights.

17 **5. Rimini’s Arguments That It Has Ceased Its Improper Behavior** 18 **Should Not Be Credited And Do Not Bar Injunctive Relief**

19 Rimini’s previous arguments that it no longer performs the actions adjudged to infringe
 20 are no basis to oppose entry of an injunction. “A private party’s discontinuation of unlawful
 21 conduct does not make the dispute moot, however. An injunction remains appropriate to ensure
 22 that the misconduct does not recur as soon as the case ends.” *Grokster*, 518 F. Supp. 2d at 1222
 23 (quoting *BMG Music v. Gonzalez*, 430 F.3d 888, 893 (7th Cir. 2005)); see also *Broad. Music,*
 24 *Inc. v. McDade & Sons, Inc.*, 928 F. Supp. 2d 1120, 1136 (D. Ariz. 2013) (“Because Defendants
 25 received numerous calls, letters, and cease and desist notices from BMI but did not cease
 26 infringement, a permanent injunction is warranted to prevent future copyright violations.”).

27 In particular, discovery in the *Rimini II* litigation has enabled Oracle to refute Rimini’s
 28 self-serving claim that its behavior has changed such that it no longer infringes Oracle’s

1 copyrights. Oracle has adduced evidence of Rimini impermissibly copying Oracle software,
 2 cross-using customers' environments in violation of their license agreements with Oracle, and
 3 creating and distributing unlicensed derivative works of Oracle's software. It suffices to show
 4 now that Rimini's protests of changed behavior are entitled to little weight, particularly given its
 5 misconduct both pre- and post-injunction in the *Rimini I* case.³

6 ***Rimini's Pre-Injunction Misconduct.*** Rimini has told this Court that its purported
 7 changes to its practices largely occurred only after the Court ruled against it on summary
 8 judgment. Tr. 751:10-15 (assertion by Rimini counsel); ECF No. 901-1, ¶ 8. Rimini continued
 9 creating and using local environments on its computer systems for years after the lawsuit was
 10 filed, after SAP conceded civil liability, and after TomorrowNow pleaded guilty to criminal
 11 charges for having local environments of Oracle software on its computer systems. ECF No.
 12 823-6 (civil stipulation); ECF No. 823-5 (guilty plea); *see also* ECF No. 823 at 5-6 (detailing
 13 how guilty plea to criminal copyright infringement and civil stipulation detailed local
 14 environments on TomorrowNow's systems). And, as was admitted at trial, Rimini still created,
 15 copied, and relied upon local environments until at least February 2014. Tr. 751:7-15 (admission
 16 by counsel). Rimini claimed it stopped these practices in light of the Court's summary judgment
 17 order, but as the Court commented at trial, "frankly, I'm unimpressed that he changes his
 18 business practice after the Court has ruled that he's committed copyright infringement in various
 19 ways, that he's following the order of the Court, essentially, at the time he does that." Tr. 754:9-
 20 13.

21 Rimini's supposed change in practice only after a finding of infringement supports the
 22 inference that Rimini will continue to infringe in the absence of a permanent injunction.
 23 *Grokster*, 518 F. Supp. 2d at 1221 ("such an inference is warranted based upon various
 24 undisputed facts, including . . . [cessation] admittedly did not commence until after this Court's
 25 September 27, 2006 Order granting Plaintiffs' motion for summary judgment."); *accord SEC v.*

26 _____
 27 ³ To be clear, Oracle is not asking now for a ruling on the merits of the issues in dispute in
 28 *Rimini II*. Instead, Oracle asks the Court for a permanent injunction restraining Rimini from
 continuing to commit the infringement that this Court and the jury have already determined to
 constitute copyright infringement.

1 *Koracorp Indus., Inc.*, 575 F.2d 692, 698 (9th Cir. 1978) (“[t]he fact that illegal conduct has
 2 ceased does not foreclose injunctive relief ... especially if no evidence of remorse surfaces until
 3 the violator is caught”); *Walt Disney Co. v. Powell*, 897 F.2d 565, 568 (D.C. Cir. 1990)
 4 (upholding trial court’s permanent injunction where the defendant “simply took the action that
 5 best suited him at the time [by voluntarily ceasing infringement]; he was caught red-handed . . .
 6 [and defendant] suddenly reformed”); *see also United States v. Parke, Davis & Co.*, 362 U.S. 29,
 7 48 (1960) (observing that voluntary cessation of activities prompted by a government
 8 investigation and subsequent suit is not reason “to deny relief altogether by lightly inferring an
 9 abandonment of the unlawful activities from a cessation which seems timed to anticipate suit”).

10 Rimini’s protestations of reform should not be accepted especially given its history of
 11 lying to the Court. Rimini falsely claimed that a software library never existed at Rimini Street.
 12 PTX 5332 (March 29, 2010 Answer) at ¶ 34 (denying existence of software library); PTX 1482
 13 (June 16, 2011 Answer) ¶ 34 (same). Rimini (through Ravin) denied at trial the full truth about
 14 the software library, falsely claiming it was not really a library, Tr. 247:7-12, that it was only
 15 “installation media,” Tr. 255:6-9, 565:9-11, and that it was only PeopleSoft. Tr. 247:14-16. In
 16 fact, Rimini’s employees called the library a library, and the library contained copies of software
 17 and documentation for all the products at issue in the case. PTX 6 (3 terabytes of Siebel part of
 18 “full local library”); PTX 8 (“major download from Cust Conn [PeopleSoft documentation] . . .
 19 all of this in house and at our disposal”); PTX 9 (“20 GB of content . . . so far” for “PSFT
 20 Customer Connection Extract”); PTX 10 (“complete library of all the content that is available
 21 from Customer Connection . . . proactively download all the available content”); PTX 223 (“now
 22 setup to download contents of the Oracle eDelivery website on a weekly basis” including Siebel,
 23 PeopleSoft, and J.D. Edwards; “Thanks for adding this to the library”), Tr. 1756:6-1757:8
 24 (Whittenbarger) (confirming PeopleSoft, Oracle Database, Siebel, and J.D. Edwards were all
 25 present and “used in connection with [Rimini’s] work for customers”); 167:5-10 (Davis) (library
 26 had all products).

27 Similarly, Rimini continued to deny cross-use all the way until trial. Rimini’s 30(b)(6)
 28 designee, Senior Vice President Brian Slepko, and Ravin each flatly denied in depositions ever

1 using one customer’s environment to develop or test updates for other customers. Tr. 804:25-
 2 805:5 (Ravin); 3173:1-3174:3 (Slepko). Then at trial, Ravin said Rimini did it “all the time.”
 3 Tr. 552:1-5 (Ravin). Rimini’s demonstrated refusal to take responsibility for its infringing
 4 conduct and its repeated self-serving and false denials of such conduct—before and even through
 5 trial—confirm the necessity of an injunction to prevent continued infringement.

6 ***Rimini’s Post-Injunction Misconduct.*** The day after the Court entered its permanent
 7 injunction (ECF No. 1065), Rimini filed an emergency motion to stay the injunction, suggesting
 8 that it “might cause ‘untold, irreversible consequences.’” ECF No. 1069 at 7:13. Yet that very
 9 same day, Rimini issued a press release assuring the public that “[t]he injunction does not
 10 prohibit Rimini Street’s ongoing or future provision of support for [Oracle’s PeopleSoft, JD
 11 Edwards, Seibel, and Database] product lines” but merely “constrains” how Rimini provides that
 12 support. ECF No. 1073-3. The Court found this double-speak to be “disingenuous” (ECF No.
 13 1094 at 4:6) and should do so again in granting Oracle’s renewed request for injunctive relief.

14 Rimini also submitted a new declaration as part of its reply in support of its emergency
 15 stay motion, alleging for the first time that the “October 11, 2016 [injunction] would require
 16 Rimini to further modify its support processes for Oracle products.” ECF No. 1079-1 at ¶ 4. Not
 17 only were these new allegations “not the kind of irreparable harm that warrants a stay” (ECF No.
 18 1094 at 4:7–8), but they constituted an admission that Rimini’s then-current processes violated
 19 the terms of the injunction.

20 These facts confirm that Rimini’s claims about how it provides support to Oracle’s
 21 licensees simply cannot be trusted. Only the entry of another permanent injunction—containing
 22 the same ban on copyright infringement from the Court’s October 11, 2016 injunction—will
 23 ensure that Rimini does not return to its old, infringing ways.

24 **B. Oracle’s Proposed Injunctive Relief Is Appropriately Tailored**

25 After thorough briefing and oral argument regarding the proper scope of a copyright
 26 injunction, the Court issued the October 11, 2016, injunction that included Section I (“Injunction
 27 Pursuant to 17 U.S.C. § 502(a)”). Although Rimini challenged the scope of this injunction on
 28 appeal, the Ninth Circuit made no finding that the injunction was in any way overbroad.

1 Accordingly, if the injunction is re-issued, as Oracle submits it should be, there is no reason to
 2 modify its prior scope.

3 As before, Oracle’s requested relief is appropriately tailored to prevent future occurrences
 4 of the conduct adjudged to constitute copyright infringement in this case. As to Oracle’s
 5 copyright claims, this Court has determined as a matter of law that:

- 6 • PeopleSoft licenses “prohibit[] Rimini Street from copying or preparing
 7 derivative works . . . other than to support the specific licensee’s own internal data
 8 processing operations on the licensee’s own computer systems” (Jury Instruction
 9 24, ECF No. 880);
- 10 • JD Edwards licenses prohibit Rimini Street from “mak[ing] copies . . . [to] access
 11 the software’s source code to carry out development and testing of software
 12 updates, to make modifications to the software, or to use the customer’s software
 13 or support materials to support other customers” (Jury Instruction 24, ECF No.
 14 880);
- 15 • Siebel licenses prohibit Rimini Street from “mak[ing] copies . . . [to] access the
 16 software’s source code to carry out modification, development and testing of the
 17 software not related to archive, emergency back-up, or disaster recovery purposes,
 18 or to use the customer’s software or support materials to support other customers”
 19 (Jury Instruction 24, ECF No. 880); and,
- 20 • clients’ licenses to Oracle Database do not permit Rimini to make any copies, and
 21 do not permit Rimini Street to use any client copies of Oracle Database to
 22 “develop and test updates for its clients” or to “support multiple customers” (ECF
 23 No. 476 at 14-15).

24 Oracle’s proposed injunction pursuant to 17 U.S.C. § 502 seeks (as before) to enforce precisely
 25 these license restrictions.

26 Oracle’s injunction appropriately reaches not only Rimini, but also its subsidiaries,
 27 affiliates, employees, directors, officers, principals, and agents involved in the relevant behavior.
 28 The Court has the power “to enforce orders against ‘a person who is not a party . . . as if a

party.” *Irwin v. Mascott*, 370 F.3d 924, 931–32 (9th Cir. 2004) (citing Fed. R. Civ. P. 71 (2004)). Any injunction entered by the Court will bind not only Rimini, but also its “officers, agents, servants, employees, and attorneys” and “other persons who are in active concert or participation with” them. Fed. R. Civ. P. 65(d)(2)(B)-(C). The phrase “active concert or participation” includes both aiders and abettors of, and privies of, an enjoined party. *See Golden State Bottling Co., v. N.L.R.B.*, 414 U.S. 168, 179–80 (1973). Oracle’s proposed injunction is fully consistent with the scope of this Court’s equitable power. *See Inst. of Cetacean Res. v. Sea Shepherd Conservation Soc’y*, 774 F.3d 935, 949–50 (9th Cir. 2014) (discussing parties’ and non-parties’ duties and obligations under an injunction).

V. CONCLUSION

For the foregoing reasons, the Court should grant this motion and issue Oracle’s proposed permanent injunction, containing the same copyright-related restrictions that the Court previously entered after extensive briefing and oral argument.

Dated: March 21, 2018

Respectfully submitted,

Morgan, Lewis & Bockius LLP

By: /s/ Thomas Hixson
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CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of March, 2018, I electronically transmitted the foregoing ORACLE'S RENEWED MOTION FOR PERMANENT INJUNCTION AGAINST DEFENDANT RIMINI STREET, INC. to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to all counsel in this matter; all counsel being registered to receive Electronic Filing.

Dated: March 21, 2018

Respectfully submitted,

Morgan, Lewis & Bockius LLP

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